

5 January 2023

Dear Portfolio,

Portfolio Strategy: Claims Management Companies (“CMCs”)

We wrote to you in October 2020 setting out our view of the key risks of harm that CMCs pose to their customers and the markets in which they operate. We also set out our two-year strategy and work plan for setting expectations of firms to mitigate those risks. While we have seen improvements in some areas, there are risks of harm that remain, and new risks that CMCs need to address. The purpose of this letter is to:

1. Set out our updated view of the drivers of harm and risks that CMCs pose to their consumers or the markets in which they operate;
2. Outline our expectation of CMCs, including how firms should be mitigating these key risks; and
3. Describe our supervisory strategy and programme of work to ensure that firms are meeting our expectations, and harms are being remedied and/or mitigated.

We group all the firms we supervise into ‘portfolios’ based on their business models. Your firm is in the CMC portfolio. This portfolio includes lead generators that seek out, refer and identify claims, and other CMCs that advise and represent claimants, and investigate claims. Other firms that undertake regulated claims management activity but have been allocated to a different primary portfolio may also find this letter useful.

We will send you a portfolio letter every two years. We will write to you after the end of this period to provide an updated view of the key risks posed by firms in this sector and our updated work plan.

Our view of the key drivers of harm

Our vision is for CMCs to be trusted providers of high-quality, good-value services that help people pursue legitimate claims for redress and benefit the public interest. To assess how firms in the CMC portfolio could cause harm, we analysed information available to us about firms’ strategies and business models. This included details of complaints we received about firms,

findings from previous work carried out, insights from new applications for authorisation, and data provided by third parties.

Since taking on responsibility for the regulation of CMCs, we have acted to prevent consumers from harm. We undertook a comprehensive re-authorisation process on firms and 30% of CMCs left the industry because they were unable to meet our standards. We recently created new rules to restrict the fees CMCs charge through a [fee cap](#), and introduced new [rules](#) banning CMC 'phoenixing' so that individuals responsible for financial services failings cannot subsequently set-up CMCs to bring claims to the FSCS. We have also used our intervention tools to protect consumers from harm by using financial promotion banning orders and agreeing/imposing requirements on over 60 firms. Alongside this work we have seen a significant reduction of contacts and complaints to the FCA about CMCs, which is a trend replicated in data we have received from external partners.

CMCs need to start preparing for the implementation of our Consumer Duty, which comes into force on 31 July 2023.

This letter references some examples of how our new Consumer Duty can apply to CMCs. More generally, it will set a higher standard of care that firms should provide to consumers in retail financial markets. The Consumer Duty will require firms to act to deliver good outcomes for customers (including those in vulnerable circumstances). This reflects the positive and proactive expectation we have of firm conduct, and our desire for firms to think more about consumer outcomes and place consumers' interests at the heart of their activities.

Amongst other things, it will require firms to focus on supporting their customers to make good financial decisions (including those in vulnerable circumstances) and avoid/avoiding causing foreseeable harm and checking whether their customers are getting good outcomes. This includes providing information consumers can understand, products and services that are fit for purpose and offer fair value and helpful customer service. A firm will, for example, not be acting in accordance with the Consumer Duty where it seeks to exploit customers' lack of knowledge, understanding or behavioural biases. We have seen examples of exploitation and misleading information. These practices are counterproductive and detrimental to a healthy financial services system and are the types of poor practices the Consumer Duty seeks to prevent.

We published our [Policy Statement \(PS22/9\)](#) and our [Finalised Guidance](#) with details of the new rules and guidance at the end of July 2022. We will act where we identify firms causing, or who we consider likely to cause, significant harm to consumers.

By now, we expect firms to have agreed their implementation plans with their board or management body, and to be able to share these with us if asked. We have been reviewing a cross-sector sample of firms' plans and we will publish a communication in the coming months containing feedback relevant to all firms within scope of the Duty, including CMCs. The latest information for firms on the Duty is available on our website here:

www.fca.org.uk/firms/consumer-duty

Furthermore, although we have seen improvements across the CMC industry, our analysis has highlighted the following residual concerns:

- **Misleading, unclear and unfair advertising** where consumers, particularly those who are vulnerable, can be misled by firms' poor-quality promotions. Often, these are produced as a result of poor-quality internal processes and sign off procedures. In contravention of our rules, we have found examples of poor or no disclosure on firm websites, search engine advertising and social media posts where important information for consumers such as prominently stating that the company is a CMC, what fees are charged, and the details of an ombudsman scheme are missing. Firms should note that the Consumer Duty contains rules in respect of Consumer Understanding which build on, and go further than, the 'clear, fair and not misleading' standard under Principle 7. Under the Duty, firms must ensure that communications are likely to be understood by the customers they are intended for and that they equip customers to make decisions that are effective, timely and properly informed.
- **CMCs using their FCA authorisation to legitimise their non-regulated services.** Incorrect or out-of-date permissions increase the risk of harm to consumers as they can mislead consumers about the level of protection offered or give credibility to unregulated activities. We expect CMCs to be clear with consumers about which of their products and services are/are not regulated, and to ensure that consumers are not harmed by any non-regulated services they provide. The way in which regulated firms carry on unregulated activities can affect our overall view of the fitness and propriety of individuals and firms, and we will act where necessary.
- **Inappropriate sourcing of customers** where firms do not always conduct or document appropriate checks when purchasing customer data or leads, or do not ensure this has been sourced lawfully from a firm with the correct FCA permissions where these are required. This risk is often driven by poor quality systems and controls, inappropriate remuneration structures, poor-quality governance, and a lack of oversight within CMCs, which can lead to bad outcomes for consumers. It is important CMCs ensure customer data is not being misused so customers do not receive unwanted contact from CMCs.
- **Firms failing to investigate the existence and merits of each element of a potential claim.** Our rules require firms to ensure that they make representations which substantiate the basis of the claim, relate to the nature of the claim and are specific to the claim, and are not false or misleading, or an exaggeration. This is further supported by our Consumer Duty, which requires products and services to meet the needs and objectives of consumers. It is important that CMCs and the firms they are claiming against work together in the interests of consumers to resolve disputes and agree streamlined claims handling processes where necessary, as set out in our [previous publication](#).
- **Poor attitude to regulatory obligations** where firms do not take a proactive approach to regulatory compliance and do not deal with the FCA in an open and co-operative way. Some CMCs are not submitting good quality returns on time and others are failing to submit on time or at all. All firms must ensure they are aware of their obligations as an authorised firm. Work is underway to move CMCs onto the FCA's

reporting system, RegData, and further information about this will be communicated shortly. In the meantime, CMCs should ensure that their firm details are up to date on Connect, particularly that the principal user's email address is correct, and submit any outstanding returns without delay. Details of reporting requirements for CMCs, and how to submit the returns, are on our website, here: www.fca.org.uk/firms/claims-management-companies-our-regulation/reporting-requirements-cmcs

As a result of the multi-firm work we conducted in the last period, we also identified some examples of poor complaint handling and an inability to identify vulnerable customers. Our Consumer Duty raises the standard of care afforded to all consumers, and builds-on our [guidance on the fair treatment of vulnerable customers](#). We expect firms to be embedding these into their operations and have comprehensive systems and controls in place to identify both complaints and vulnerable consumers, maintain appropriate records, and tailor their services to clients appropriately.

Our areas of focus

[Our Strategy 2022 to 2025](#), sets out our vision and ambitions for the next three years, and our [Business Plan](#) explains our programme of work for this year. In addition to our routine supervision and authorisations work, work to clamp down on unauthorised activity, and in consideration of our organisational Strategy and Business Plan, we will focus our strategy for CMCs on the following areas:

- **CMCs conducting both unregulated and regulated activities:** We will carry out proactive work to identify firms who are not using their permissions and use our powers to remove them, so that the potential for unregulated business to benefit from the 'halo' effect of FCA authorisation is minimised. We will also consider if the services offered are appropriate for customers, whether processes and systems and controls are in place to differentiate between regulated and unregulated business and ensure customers are not misled into believing all services are FCA regulated. Our Consumer Duty requires CMCs to act in good faith, and to provide consumers with the right information to make properly informed decisions.
- **CMCs using lead generators:** We will carry out proactive work to assess whether CMCs have robust systems and controls to ensure customers are sourced appropriately, data is handled legitimately, and complete and adequate records are kept.
- **Service standards:** We will carry out proactive work to consider whether relevant CMCs are investigating the existence and merits of each element of a potential claim before making or pursuing the claim or advising the customer to make or pursue the claim. In addition to our CMC-specific rules, our Consumer Duty requires CMCs to ensure that the service meets the needs, characteristics, and objectives of customers in the target market.

We will also continue to monitor the embedding of our new fees and phoenixing rules and take robust action where we see these rules are not being met. This work will help us to reduce and prevent serious harm, set and test higher standards, and promote competition in line with our organisational strategy.

Additional areas of consideration

In addition to the above key risks of harm, we would also highlight the following areas that CMCs should give due consideration to:

Data-led regulation

As we transition towards becoming a more data-led regulator (see the [FCA data strategy](#)), we remind firms we will increase our focus on data, not limited to regulatory returns. Principle 11 includes a requirement for firms to deal with its regulators in an open and co-operative way, this encompasses co-operating wherever possible with respect to ad-hoc information requests, such as surveys. Further to this, we expect all firms in this portfolio to be aware of the requirements and guidance in [SUP 15](#), and to submit notifications as required. This should be when an issue or event is identified, and firms should not wait until resolution to notify us. Failure to notify us of matters set out in SUP 15.3 could have serious regulatory impact as it may impact our ability to effectively supervise the firm and raise questions on whether the firm is meeting the Effective Supervision Threshold Condition ([COND 2.3](#) Effective Supervision).

Environmental, social and governance (ESG)

Financial services and markets have a central role in the transition to a low carbon economy and a more sustainable future. Building from our work so far, we have developed a refreshed [ESG strategy](#). It sets out our target outcomes and the actions we expect to take to deliver these in the coming months. Diversity and inclusion is a key component of ESG – both in its own right, and as an enabler of creative solutions to other environmental and social challenges. As set out in [DP21/2](#), having staff and Board members from diverse background and experiences contributes to this.

Next steps

We expect you to take notice of the areas of concern and the expectations we have set out in this letter and discuss this at board level or other appropriate governing body, if appropriate, in order to consider whether you can make changes to reduce any harm or potential harm to consumers. We will identify CMCs that appear to cause harm, work with our regulatory family and other external partners to identify issues, and take action against firms that are causing harm.

Whatever the size of your firm, you should have appropriate governance and systems and controls for the nature, scale and complexity of your business. If we contact you, we will expect you to be able to demonstrate this and your wider actions to protect consumers from harm. If you cannot do this, we will take steps to address any weaknesses we identify. In particular, we will act where we find that CMCs do not put their customers at the heart of how they do business, for example where they have put their own profits and income above consumers' interests and fair treatment.

We will consider using our full range of regulatory tools – including enforcement – where CMCs fail to comply with our rules. All CMCs must also adhere to the Principles for Businesses, including Principle 11 (Relations with regulators) which requires firms to deal with their regulators in an open and cooperative way.

If you have any questions, please contact your normal supervisory contact on 0300 500 0597. This is the primary point of contact for your firm's interactions with the FCA. You can also email us at firm.queries@fca.org.uk.

However, there may be times when your firm faces urgent issues of strategic importance. If this happens, please contact Mark Burns, Head of Department, on 020 7066 1360 or Mark.Burns@fca.org.uk, or Greg Williams, Manager, on 020 7066 1475 or Greg.Williams@fca.org.uk.

Yours sincerely,

Roma Pearson

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